

**ARIZONA SUPREME COURT**  
Child Support Guidelines Review Committee  
**MEETING MINUTES**  
March 27, 2009  
State Courts Building, Phoenix, Arizona

**MEMBERS PRESENT:**

Hon. Rebecca Albrecht  
Hon. Bruce R. Cohen, Chair  
Prof. Ira Ellman  
Ms. Kim Gillespie  
Ms. Cele Hancock  
Mr. David Horowitz  
Comm. Rhonda Repp  
Hon. Michala Ruechel  
Hon. Sarah Simmons  
Hon. Kevin White

**STAFF:**

Ms. Kathy Sekardi  
Ms. Lorraine Nevarez

**PRESENT:**

Ms. Tara Ellman  
Ms. Patricia Madsen  
Mr. Don Vert

**MEMBERS ABSENT:**

Mr. Robert Barrasso  
Ms. Helen Davis

**Call to Order**

Judge Cohen, Chair, called the meeting to order at 10:11 a.m. Judge Cohen welcomed the members and reviewed the meeting materials. A passage from the Massachusetts Child Support Guidelines Task Force Report was highlighted which recognizes one of the challenges faced by this committee - that establishing child support guidelines ultimately requires policy decisions, not purely economic decisions, as well as the end result for the child.

**Approval of the Minutes**

**MOTION:** The February 27, 2009 minutes were moved and seconded as submitted.

**Review Spreadsheet Study Task Group**

A summary of the task group's recommendations were disseminated to the group in order to begin discussion on the grid comparisons. The task group explained the following:

- The current guidelines support amounts are very low.
- The examples in the charts constitute 38% of all cases.
- The workgroup focused on the cases that were most common.
- Used most of the one child cases.
- Discussed and focused on the outcomes and benchmarks to use.

THE COMMITTEE COMMENTS INCLUDED SOME OF THE FOLLOWING:

- It was suggested that an additional benchmark may be needed to measure the non custodial parent's household that includes a child, prior to the support payment being made. This measure would address both parents living with a child a certain amount of the time.
- The Committee questioned the use of negative child support amounts. If the child support amount is a negative number; how should it be modified? It was suggested that a presumption regarding negative child support amounts be incorporated into the guidelines. Another member voiced that the committee may want to recognize there may exist situations where it is important for the custodial parent to pay the non custodial parent. These situations may generate more negative numbers than what are in the current guidelines. There was concern that unintended consequences would arise for all the different situations that could exist. There may be some situations where a negative child support amount should be paid; however, most important to consider is the child's well-being. There was general consensus that as parenting time gets closer to an equal parenting time arrangement, and where a disparity of income increases as a result, the child support amount should increase.
- Prof. Ellman discussed the proposed parenting time adjustment, which include "variable" and "fixed costs" components. It is anticipated that this method will eliminate the problem of litigating over "cliff" parenting time adjustments.
- The Committee discussed a change in implementation of child care costs. Members discussed the "cost of generating income" that is required for parents with young children and agreed that this adjustment should be made to the income of the parent rather than an addition to the child support amount. Child care has been included in the Phase II standard of living benchmarks.
- The Committee also discussed adding a definition of childcare similar to the Massachusetts definition, which embraces the "totality of circumstances."
- The Simplified Application of the Guidelines issue was identified by a Committee member and all agreed to table the discussion to the next committee meeting.

## **Approval of Phase II**

**MOTION:** The Committee approved recommending the Phase II Model to the Arizona Judicial Council in June 2009. The Committee recognized that there were two members not present at the meeting and offered to update them via teleconference. Staff will schedule this meeting.

The Committee was asked to provide potential names to call the Phase II model. The members will vote on their favorite name at the next meeting.

## **Approval of Parenting Time Adjustment**

**MOTION:** The Committee moved and seconded to adopt the proposed parenting time adjustment method described by Prof. Ellman

## **Approval of the Child Care Adjustment**

**MOTION:** The Committee moved and seconded to accept the reasonable and necessary child care costs as an adjustment to gross income of the parent paying those costs.

## **Review Guideline Sections 1-25**

The Committee reviewed guidelines sections and voted to approve the following changes, except for Section 24(C):

## **SECTIONS**

### **21. Third-Party Care Givers**

When a child lives with a third-party caregiver by virtue of a court order, administrative placement by a state agency or under color of authority, the third-party caregiver is MAY BE entitled to receive child support payments from each parent on behalf of the child.

### **22. Court's Findings**

The court shall make findings in the record as to: Gross Income, Adjusted Gross Income, Basic Child Support Obligation, Total Child Support Obligation, each parent's proportionate share of the child support obligation, and the child support order. FOR EASE OF ADMINISTRATION, THE COURT MAY ROUND OFF THE CHILD SUPPORT ORDER AMOUNT TO THE APPROPRIATE INTERVAL WITHOUT THE ORDER SUCH BEING DEEMED A DEVIATION FROM THE GUIDELINE AMOUNT.

The findings may be made by incorporating a worksheet containing this information into the file.

~~If the court attributes income above minimum wage income, the court shall explain the reason for its decision.~~

The child support order shall be set forth in a sum certain and start on a date certain. A new child support order shall be filed upon any change in the amount or due date of the child support obligation.

### **23. Exchange of Information**

(No substantive changes at this time.) Move to Section III(B)

### **24. Modification**

B(1) PROCESS FOR MODIFICATION

CHILD SUPPORT ORDERS CAN ONLY BE MODIFIED BY COURT ORDER. AN ORDER TO MODIFY CHILD SUPPORT CAN BE OBTAINED THRU ANY OF THE FOLLOWING PROCEDURES:

~~A.~~ a. Standard Procedure

Pursuant to Arizona Revised Statutes Sections 25-327 and 25-503, either parent or the state Title IV-D agency may ask the court to modify a child support order upon a showing of a substantial and continuing change of circumstances.

~~B.~~ b. Simplified Procedure

Either parent or the state Title IV-D agency may request the court to modify a child support order if application of the guidelines results in an order that varies 15% or more from the existing amount. A ~~fifteen~~ 15% ~~percent~~ variation in the amount of the order will be considered evidence of substantial and continuing change of circumstances. A request for modification of the child support amount must be accompanied by a completed and sworn "Parent's Worksheet for Child Support Amount," and documentation supporting the incomes if different from the court's most recent findings regarding income of the parents. If the party requesting the modification is unable to provide documentation ~~supporting~~ REFLECTING the other party's income, the requesting party shall indicate that the income amount is attributed<sup>4</sup> OR estimated and ~~state~~ SHALL SET FORTH the basis for the amount listed. The state Title IV-D agency may submit a parent's worksheet.

~~The simplified procedure also may be used by either parent or the state Title IV-D agency to modify a child support order to assign or alter the responsibility to provide medical insurance for a child who is the subject of a child support order. A modification of the medical assignment or responsibility does not need to vary by 15% or more from the existing amount to use the simplified procedure.~~

A copy of the request for modification of child support and the "Parent's Worksheet for Child Support Amount," including supporting documentation, showing that the proposed child support amount would vary 15% or more from the existing child support order shall be served on the other parent, or on both parents if filed by the state Title IV-D agency, pursuant to Rules 41 AND 42, ARIZONA RULES OF FAMILY LAW PROCEDURE. ~~4.1 and 4.2, Rules of Civil Procedure.~~

If the requested modification is disputed, the parent receiving service must request a hearing within 20 days of service. If service is made outside the state, as provided in Rule 42, ARIZONA RULES OF FAMILY LAW PROCEDURE ~~4.2, Rules of Civil Procedure,~~ the parent receiving service must request a hearing within 30 days of service.

A party requesting a hearing shall file a written request for hearing accompanied by a completed and sworn "Parent's Worksheet for Child Support Amount." Copies of the documents filed, together with the notice of hearing, shall be served on the other party and, if appropriate, the state Title IV-D agency by first class mail not less than 10 judicial days prior to the hearing.

Upon proof of service and if no hearing is requested within the time allowed, the court will review the request and enter an appropriate order or set the matter for hearing.

If any party requests a hearing within the time allowed, the court shall conduct such hearing. No order shall be modified without a hearing if one is requested.

The notice provision of Rule 44, ARIZONA RULES OF FAMILY LAW PROCEDURE ~~55, Rules of Civil Procedure~~, does not apply to this simplified modification procedure. A request to modify child support, request for a hearing and notice of hearing, "Parent's Worksheet for Child Support Amount" and child support order filed or served pursuant to this subsection must be made using forms approved by the Arizona Supreme Court or substantially similar forms.

Approved forms are available from the Clerk of the Superior Court.

c. BY AGREEMENT

THE PARTIES MAY AGREE TO MODIFY A CHILD SUPPORT ORDER. TO BECOME EFFECTIVE, THE AGREEMENT MUST BE IN WRITING, SIGNED BY ALL PARTIES, FILED WITH THE CLERK OF COURT, AND APPROVED BY THE COURT. IF THE AGREED UPON AMOUNT IS DIFFERENT FROM THE AMOUNT CALCULATED UNDER THE GUIDELINES, IT MUST BE EXPLAINED AS REQUIRED BY SECTION 4A ABOVE.

2. LIMITATIONS

a. EFFECT OF EMANCIPATION

IF CHILD SUPPORT IS ORDERED FOR MORE THAN ONE CHILD, THE AMOUNT OF CHILD SUPPORT DOES NOT AUTOMATICALLY CHANGE IF ONE OF THE CHILDREN GRADUATES FROM HIGH SCHOOL, REACHES THE AGE OF MAJORITY, OR IS OTHERWISE EMANCIPATED. To obtain a modification ~~to~~ OF the child support order, a request, PETITION OR AGREEMENT must be made in writing to the court to recalculate the child support obligation pursuant to these guidelines. ~~TO SEEK A CHANGE OF THE CHILD SUPPORT A PARENT MAY SEEK TO MODIFY MAY FILE A PETITION FOR MODIFICATION.~~

b. TERMINATION OF SUPPORT

ARIZONA LAW PROVIDES THAT A CHILD SUPPORT ORDER TERMINATES WHEN THE CHILD OR CHILDREN HAVE GRADUATED FROM HIGH SCHOOL, REACHED THE AGE OF MAJORITY, OR ARE OTHERWISE EMANCIPATED.

UPON ENTRY OF AN INITIAL OR MODIFIED CHILD SUPPORT ORDER, THE COURT SHALL, OR IN ANY SUBSEQUENT ACTION RELATING TO THE CHILD SUPPORT ORDER, THE COURT MAY, ESTABLISH A PRESUMPTIVE DATE FOR THE TERMINATION OF THE CURRENT CHILD SUPPORT OBLIGATION. THE PRESUMPTIVE TERMINATION DATE SHALL BE THE LAST DAY OF THE MONTH OF THE 18<sup>TH</sup> BIRTHDAY OF THE YOUNGEST CHILD INCLUDED IN

THE ORDER UNLESS THE COURT FINDS THAT IT IS PROJECTED THAT THE YOUNGEST CHILD WILL NOT COMPLETE HIGH SCHOOL BY AGE 18. IN THAT EVENT, THE PRESUMPTIVE TERMINATION DATE SHALL BE THE LAST DAY OF THE MONTH OF THE ANTICIPATED GRADUATION DATE OR AGE 19, WHICHEVER OCCURS FIRST. THE ADMINISTRATIVE INCOME WITHHOLDING ORDER ISSUED BY THE DEPARTMENT OR ITS AGENT IN TITLE IV-D CASES AND AN ORDER OF ASSIGNMENT ISSUED BY THE COURT SHALL INCLUDE THE PRESUMPTIVE TERMINATION DATE. THE PRESUMPTIVE DATE MAY BE MODIFIED UPON CHANGED CIRCUMSTANCES. AN EMPLOYER OR OTHER PAYOR OF FUNDS HONORING AN ORDER OF ASSIGNMENT OR AN ADMINISTRATIVE INCOME WITHHOLDING ORDER THAT INCLUDES THE PRESUMPTIVE TERMINATION DATE AND IS FOR CURRENT CHILD SUPPORT ONLY, SHALL DISCONTINUE WITHHOLDING MONIES AFTER THE LAST PAY PERIOD OF THE MONTH OF THE PRESUMPTIVE TERMINATION DATE. IF THE ORDER OF ASSIGNMENT OR ADMINISTRATIVE INCOME WITHHOLDING ORDER INCLUDES CURRENT CHILD SUPPORT AND ARREARAGE PAYMENT, THE EMPLOYER OR OTHER PAYOR OF FUNDS SHALL CONTINUE WITHHOLDING THE ENTIRE AMOUNT LISTED ON THE ORDER OF ASSIGNMENT OR ADMINISTRATIVE INCOME WITHHOLDING ORDER UNTIL FURTHER ORDER. FOR PURPOSES OF DETERMINING THE PRESUMPTIVE TERMINATION DATE, IT IS FURTHER PRESUMED:

- i. THAT A CHILD NOT YET IN SCHOOL WILL ENTER 1ST GRADE IF THE CHILD REACHES AGE 6 ON OR BEFORE SEPTEMBER 1 OF THE YEAR IN WHICH THE CHILD REACHES AGE 6; OTHERWISE, IT IS PRESUMED THAT THE CHILD WILL ENTER 1ST GRADE THE FOLLOWING YEAR; AND,
- ii. THAT A CHILD WILL GRADUATE IN THE MONTH OF MAY AFTER COMPLETING THE 12TH GRADE.

EVEN IF YOUR CHILD SUPPORT OBLIGATION HAS STOPPED, ANY ORDER OF ASSIGNMENT MAY NOT TERMINATE. IF YOUR ORDER OF ASSIGNMENT DOES NOT STOP, YOU MUST GO TO COURT TO GET A SPECIFIC ORDER STOPPING THE WAGE ASSIGNMENT IN A IV-D CASE, YOU MAY STOP THE WAGE ASSIGNMENT BY CONTACTING THE IV-D AGENCY.

c. RETROACTIVE MODIFICATION

ARIZONA LAW LIMITS RETROACTIVE MODIFICATION OF CHILD SUPPORT. IF THERE IS A SUBSTANTIAL AND CONTINUING CHANGE IN CIRCUMSTANCES THAT A PARTY BELIEVES WOULD WARRANT MODIFICATION OF THE CHILD SUPPORT ORDER, THE PARTY IS REQUIRED TO FILE FOR THE NECESSARY RELIEF FROM THE COURT.

d. GROUNDS FOR MODIFICATION

A substantial variance between an existing child support order and an amount resulting from application of the ~~new guidelines~~ MOST RECENTLY ENACTED GUIDELINES

may be considered evidence of a substantial and continuing change of circumstances for purposes of a modification. A variance of at least 15% would be evidence of a substantial and continuing change of circumstances.

## **25. -Effect of Cessation of Child Support for One Child**

b. ~~If THE child support ORDER IS for more than one child was ordered under these guidelines and thereafter the duty to support one of the children stops, the order is not automatically reduced by that child's share. To obtain a modification to the child support order, a request must be made in writing to the court to recalculate the child support obligation pursuant to these guidelines. The procedure specified in Section 24 may be used for this purpose.~~

~~EXAMPLE: The child support order for a Combined Adjusted Gross Income of \$1,500, with four children is \$600. One child graduates from high school and turns 18. In determining the new child support amount, do not deduct one fourth of the order for a new order of \$450. Instead, determine a new child support order by applying the guidelines. (NOTE: This method varies from the one used in Section 9.B.4.).~~

The Committee Chair assigned guidelines sections to the members. The committee will discuss potential changes to the rest of the sections at the next committee meeting. The assignments are as follows:

- Judge Ruechel-sections 5, 6, 7, 18
- Kim Gillespie, Judge Albrecht and David Horowitz-sections 8 -15
- Cele Hancock-sections 22, 23, 19, 27
- Kim Gillespie- Medical Insurance/Cash Medical section 17
- Judge Repp- section 20
- Judge Cohen-section 16
- Judge White-section 21 and 28
- Judge Albrecht-section 24
- David Horowitz-section 7

## **Develop Proposed April 24, 2009 Agenda**

1. Call to Order
2. Minutes
3. Discuss naming the Phase II child support model
4. Discuss cash medical support orders
5. Discuss proposed revisions to the remaining Guideline Sections
6. Discuss the simplified application of the guidelines
7. Negative child support orders
8. Discuss an interim committee to serve
9. Discuss May meeting date
10. Call to the Public
11. Adjourn

**Call to the Public**

Public did not comment.

**Adjourn**

The meeting was adjourned at 3:30 p.m.